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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Review Staff: 76/0139
23 January 1976

Mr. A. Searle Field
Staff Director
Select Committee on Intelligence
House of Representatives
Washington, D.C. 20515

Dear Mr. Field:

It has occurred to me, even at this late date, that this material on oversight might be of interest to your staff and members of the HSC.

Sincerely,

[redacted]

25X1A

Review Staff

Attachment:
As Stated

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NTRAL INTELLIGENCE AGEI
WASHINGTON, D.C. 20505

29 October 1975

Cyrus R. Vance, President
Association of the Bar of the City of New York
42 West 44th Street
New York, New York 10036

Dear Cy:

Earlier this year we received a pamphlet entitled, "The Central Intelligence Agency: Oversight and Accountability" by the Committee on Civil Rights and the Committee on International Human Rights of the Association of the Bar of the City of New York. The report subsequently appeared in the April 1975 issue of The Record, published by the Association.

It is not our custom to comment on publications dealing with CIA, nor to argue with conclusions which anyone is entitled to draw, no matter how much we may disagree. However, in examining the report of your two committees, we found numerous factual errors, miscitations of statutes and texts, misquotations, and material out of context.

Because of the immense prestige of the Bar Association of the City of New York, we made a careful critique of this report, which is enclosed, together with a short summary. This paper is not a brief in opposition; it is designed to question the validity of some of the research and thus raise legitimate questions as to some of the statements and conclusions. The critique is paged to the original report which we received and not to the pagination as it subsequently appeared in The Record.

After you have read this critique, you may well wish to insert some statement in an early issue of The Record, in view of its large readership among members of the Bar and law libraries who rely on these reports for accuracy and ideas.

My best personal regards to you.

Sincerely,

[redacted] 25X1A

John S. Warner
General Counsel

Enclosures

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SUMMARY OF CRITIQUE

I. FACTUAL ERRORS AND MISCONCEPTIONS.

As set forth in the attached Critique, the Report's major weakness lies in its many factual errors, some large, some small, as well as what can best be described as misconceptions about CIA, its activities and statutory responsibilities. A few examples are illustrative of the more detailed explanations contained in the Critique.

One error which appears in several places in the Report is that in 1946 President Truman established the National Intelligence Authority and the Central Intelligence Group by Executive order. There was no Executive order; these organizations were established under the terms of a Presidential Directive issued to the Secretaries of State, War and the Navy. Nor did the subsequent National Security Act of 1947 remove CIA from "military control" (Report, p. 3, l. 1). Neither CIG nor CIA was ever under "military control." The National Intelligence Authority, which gave direction to CIG, was composed of the three Secretaries to whom the Directive was addressed, and Admiral Leahy, Chief of Staff to the President. The National Security Council, which directs the activities of CIA, is composed entirely of civilians and is chaired by the President.

Among other examples of factual errors is the statement that the National Security Act of 1947 established the Department of Defense (Report, p. 2, par. 3). That Act established the National Military Establishment, headed by a Secretary of Defense. The Department of Defense was not established until the National Security Act Amendments of 1949. Nor was Secretary Forrestal ever the Secretary of War (Report, p. 7, par. 2).

The Report presents a generally misconceived view of the functions of the National Security Council (NSC), especially vis-a-vis the CIA. At p. 14 of the Report, the NSC is described as an advisory and coordinating body, while overlooking the NSC's directive authority over CIA as set forth in section 103(d) of the National Security Act of 1947. From their misreading of the statute, the authors of the Report then continue that "Nowhere is the NSC directly given the power to conduct political operations" and then conclude that it is difficult for CIA to maintain that it conducts its covert action operations as a delegation of power from the NSC. NSC does not have the power to delegate, and CIA does not claim such delegation. CIA bases its authority in this field in part on its statutory provisions under the direction of the NSC.

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Another area of misconception in the Report is its discussion of congressional intent as to CIA's role in clandestine collection (espionage). Footnote 74 of the Report (p. 11 at p. 40) argues that "as originally envisioned, the CIA was to be, primarily, a correlator and evaluator of intelligence gathered by others." This is not correct. From the earliest drafts of the concepts for a peacetime intelligence service in 1944 and 1945, it was envisioned that clandestine collection would be centralized in such a service. The members of the congressional committees which established CIA were well aware of what the CIA role was to be in this field. It was thoroughly considered in executive sessions by the committees involved, and CIA's primacy in that field was understood. It was also mentioned in the floor debate in the House (see Critique, III.B.h).

In order not to prolong this summary unduly, one can merely mention that we have detailed in the Critique other misconceptions regarding covert action activities, budgetary matters, and the Director's responsibilities to protect intelligence sources and methods from unauthorized disclosure. It should be emphasized, however, that the latter responsibility runs only to the field of intelligence and not to "all government documents and sources" as claimed on p. 11 of the Report.

II. MISCITATIONS OF STATUTES AND TEXTS.

There are several miscitations of statutes and texts in the Report. The statute most often miscited is the Foreign Assistance Act of 1974. In quoting the provision of that Act which deals with CIA, the Report cites (p. 15, par. 1, and elsewhere) section 663 of the Act. Actually, the section which should be cited is section 32 of the Foreign Assistance Act of 1974 which enacts an amendment to the Foreign Assistance Act of 1961, to be numbered section 662 of the latter Act. The Report then continues to misquote subsection (b) of the misnumbered section.

Other citations which seem to cause difficulty to the authors of the Report are to the National Security Act of 1947. For instance, at p. 14, par. 2 of the Report, the text cites a provision attributed to the National Security Act of 1947 which is actually section 7 of the Central Intelligence Agency Act of 1949.

A further miscitation appears in connection with footnote 103 (p. 15 at p. 42). There the cited House Report is correctly quoted but adds "as quoted in Wise & Rose," [The Invisible Government] at p. 10. First, one must note that the name of the second author of that book is Ross, not Rose. Secondly, there is no reference, nor any quotation, from the House Report at the cited p. 10 of their book. That page is about the Bay of Pigs.

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III. MISQUOTATIONS AND MISLEADING STATEMENTS.

In the Report (p. 1, par. 2) there is a statement which is misleading, at least by implication, when it states that CIA's "activities may be any that the National Security Council directs, as long as they concern in some fashion 'the national security.' " The Report omits the important modifier in the National Security Act of 1947 which provides that the Agency shall perform such other functions and duties "related to intelligence affecting the national security" (emphasis supplied) as the NSC may from time to time direct.

Also misleading is the handling of the quotation in the Report (p. 3, par. 2) of the Director's authorities in the field of unvouchered funds. The Report at this point places in quotation marks what would appear to be the text of a part of section 8(b) of the CIA Act of 1949. As pointed out in the Critique (par. I.1) this is not an accurate quotation of the statute. The Report (p. 3, par. 2) is also at best misleading in its discussion of section 7 of the CIA Act of 1949 concerning CIA authorities to bring certain aliens into the United States for permanent residence (see Critique, Sec. I.m). The Report (p. 10, #18) also speaks of the Agency supplying equipment and safe houses "to other government officials," sourcing the statement to Mr. Colby's confirmation hearings. In those hearings at the cited page, Mr. Colby testified that such facilities had been provided to White House employees, a much narrower term than "other government officials."

IV. MATERIAL OUT OF CONTEXT.

In the very first paragraph of the Report, Director Colby is quoted as stating that CIA domestic activities have included the insertion of agents into "American dissident circles." It would have presented a fairer picture if Mr. Colby's entire sentence at this point had been used. It reads:

> In order to obtain access to foreign circles, the Agency also recruited or inserted about a dozen individuals into American dissident circles in order to establish their credentials for operations abroad. [Emphasis supplied.]

Similarly, it would have been more even-handed if the Report in its first paragraph had included exactly what Director Colby did say about CIA's dossiers on American citizens. (See Critique, Introduction, par. b).

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Under the general heading "Domestic Activities Viewed as Permissible by the CIA," the Report (pp. 9-10) lists 18 items. Several are taken from the Senate Hearing on the Nomination of Mr. Colby to be DCI. Actually, the cited items are taken from written replies to questions submitted by Senator Symington for inclusion in the Hearing record. It would have placed Mr. Colby's answers in a better context if the Report had included his preamble sentence to his answers. In that sentence, Mr. Colby stated:

> Provided that CIA's activities within the U. S. are in the prosecution of foreign intelligence and do not contravene U. S. law, I believe they do not conflict with the statutory restriction against CIA involvement in domestic affairs.

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CRITIQUE ON THE CENTRAL INTELLIGENCE AGENCY: OVERSIGHT AND ACCOUNTABILITY, A Report by the Committees on Civil Rights and International Human Rights of the Association of the Bar of the City of New York

INTRODUCTION

a. In citing DCI Colby's Statement to the Senate Appropriations Committee on 15 January 1975, the Report (p. 1, par. 1) quotes him as stating that CIA domestic activities have included the insertion of agents into "American dissident circles." This is taken out of context. The full quote from the DCI's Statement reads:

> In order to obtain access to foreign circles, the Agency also recruited or inserted about a dozen individuals into American dissident circles in order to establish their credentials for operations abroad. [Emphasis supplied.]

b. In again citing the DCI's Statement of 15 January 1975, the Report states (p. 1, par. 1) that CIA had compiled dossiers "on about 10,000 American citizens," by implication American dissidents. The DCI's explanation would have been appropriate here. It reads:

> In the course of this program, files were established on about 10,000 citizens in the counterintelligence unit. About two-thirds of these were originated because of specific requests from the FBI for information on the activities of Americans abroad, or by the filing of reports received from the FBI for possible later use in connection with our work abroad.

c. The Report states (p. 1, par. 2) that CIA's "budget is exempt from legislative review." This is untrue. Subcommittees of both the Senate and House Appropriations Committees over the years have given the CIA budget close scrutiny. Furthermore, the special House Appropriations Subcommittee which has oversight of the CIA budget has recently been enlarged to include all the members of the Defense Appropriations Subcommittee.

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d. The Report (p. 1, par. 2) also contains a misleading statement, at least by implication, when it states that CIA's "activities may be any that the National Security Council directs, as long as they concern in some fashion 'the national security.'" The Report omits the important modifier in the National Security Act of 1947 in this connection; the statute reads:

> [T]o perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct. [Emphasis supplied.]

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I. CREATION AND LEGAL DEVELOPMENT OF THE CENTRAL INTELLIGENCE AGENCY

a. Footnote 2 (p. 1 at p. 36) omits a word in citing the Ransom book. The footnote reads "extensive and covert activity." It should read "extensive espionage and covert activity."

b. The Report states (p. 2, ll. 1-2) that the plan for a post-war intelligence service was "sidetracked" by the Joint Chiefs of Staff. The Report does not point out that the sidetracking occurred as a result of the leak of the top secret plan to Walter Trohan of the Chicago Tribune, where the article appeared on 9 February 1945 (as well as in the Washington Times-Herald), resulting in discussions being temporarily suspended by the JCS on orders from Gen. Marshall. They were resumed in September 1945.

c. The Report states (p. 2, l. 2) that the OSS was disbanded on September 20, 1945. While this is the correct date for the issuance of the executive order, the effective date of the dissolution of OSS was 1 October 1945.

d. The Report states (p. 2, par. 1) that President Truman established the National Intelligence Authority by "executive order." Actually, it was established by a Presidential Directive to the Secretaries of State, War, and the Navy. Nor did the Directive designate Admiral Leahy as a member of the NIA, as stated in this paragraph. It merely designated "another person to be named by me as my personal representative;" and Admiral Leahy was subsequently so designated.

e. The Report states (p. 2, par. 2) that one of CIG's roles is "coordinating the activities of the intelligence agencies throughout the government." Actually, the Presidential Directive limited the coordination to the intelligence elements of State, War, and the Navy. The Report is only partially correct here in stating that one of CIG's first tasks was to furnish the President "with a daily report of intelligence information, a function which its successor continues to perform." It is true that CIG furnished the President with a daily intelligence report, but the CIA daily report now contains comments and evaluations of such information. This was not true of the original CIG reports, as State blocked the inclusion of any evaluation. This precipitated a long and continuing battle between the agencies concerned. This whole paragraph is taken with very little change from a law review article by Prof. Walden, error included.

f. The Report discusses (p. 2, par. 3) the "Report on the System Currently Employed in the Collection, Evaluation, and Dissemination of Intelligence ..." released by the House Military Affairs Committee in December 1946. In taking note of the Committee's call for permanent legislation for CIG, the authors of the Report are apparently unaware of the fact that Admiral Souers had made such a

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recommendation to the NIA in his final report to that body in June 1946; and that such legislation had already been drafted in the spring of 1946 by SSU/CIG's Office of General Counsel. The impact of the House Military Affairs Committee Report on the subsequent hearings and debate on the National Security Act of 1947 was minimal, and not the cause and effect implied here. CIG had little or nothing to do with the Military Affairs Committee's work and Report. The Bar Association Report also continues its error by designating President Truman's Presidential Directive as an "executive order." A further error in this paragraph is the statement that the National Security Act of 1947 established the Department of Defense. That Act established the National Military Establishment, headed by a Secretary of Defense. The Department of Defense was not established until the National Security Act Amendments of 1949.

g. At the bottom of p. 2, the Report digests the duties of CIA as set forth in the National Security Act of 1947. Conspicuously absent from duty #3 as set forth in the Report is the statutory requirement that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure.

h. The Report states (p. 3, l. 1) that, by the National Security Act of 1947, "the CIA was removed from military control ...." Neither CIG nor CIA was ever under "military control." The members of the NIA were all civilians, except for Admiral Leahy. The members of the NSC are all civilians.

i. Footnote 10 of the Report (p. 3 at p. 37) states that Rear Admiral Hillenkoetter became the first Director (of CIA) on September 15, 1947. This date is incorrect. Section 310 of the National Security Act of 1947 provided, with certain exceptions not pertinent here, that the Act would become effective on the day after the day on which the first Secretary of Defense takes office. Secretary Forrestal was sworn in as Secretary of Defense on 17 September, which brought the CIA provisions into effect the next day. Actually, Admiral Hillenkoetter did not take the oath until 26 September.

j. The Report states (p. 3, par. 1) that the DCI was empowered "to inspect all intelligence relating to national security gathered by any agency of the government ...." This is not accurate. A sharp distinction was drawn with regard to information from the FBI. A special proviso was written into sec. 102(e) of the Act which states that:

> [U]pon the written request of the Director of Central Intelligence, the Director of the Federal Bureau of Investigation shall make available to the Director of Central Intelligence such information for correlation, evaluation, and dissemination as may be essential to the national security.

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The right of inspection which is given to the DCI vis-a-vis the other intelligence agencies of the government is not authorized vis-a-vis the FBI.

k. The Report (p. 3, par. 1) purports to quote the text of sec. 102(c) of the National Security Act of 1947. When quoted correctly, the word "interest" in the last line of the paragraph should read "interests." This error is doubtless caused by the use of Walden's text, cited in footnote 12, which contains this error, rather than checking the actual statutory language. Footnote 12, which follows this quotation, also cites in support, inter alia, Corey Ford's book, Donovan of OSS. However, there are no references to the DCI's termination authority in the Ford book at the pages cited.

l. The Report (p. 3, par. 2) discusses the CIA Act of 1949. It quotes two provisions of that Act. Then it quotes (par. 2, ll. 8-10) what would appear to be a third quotation from the Act, as follows:

> [S]uch expenditures to be accounted for solely on the certificate of the Director without any further accounting therefor. [Emphasis supplied.]

The correct statutory quotation from the Act reads:

> [S]uch expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified. [Emphasis supplied.]

It is misleading, to say the least, to have included this erroneous quotation in the text of the Report as if it were taken from the Act, even though it is preceeded in the text of the Report by the phrase: "and granted him the extraordinary right to spend money simply by signing his name."

m. The Report (p. 3, par. 2) is certainly misleading to the general public when it states that the CIA Act of 1949 allows the Director:

> [I]n collaboration with the Attorney General and the Commissioner of Immigration, to admit up to 100 persons into the United States each year secretly ...

without regard to immigration quotas. The word "collaboration" has the connotation of plot or something sinister, and the quote furthermore implies that CIA can bring in any 100 aliens that it might choose. The statute is certainly more explicit and reads:

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> Whenever the Director, the Attorney General, and the Commissioner of Immigration shall determine that the entry of a particular alien into the United States for permanent residence is in the interest of national security or essential to the furtherance of the national intelligence mission .... [Emphasis supplied.]

A correct presentation of the text of the statute, together with a reading of the Committee Reports on this legislation, as well as the extensive debate which accompanied its passage, would have presented a much fairer picture to the public instead of the misleading implication of the Report.

n. The Report (p. 3, par. 3) misquotes the quoted provision from the National Security Act of 1947. The last word in l. 4 should read "related" rather than "relating."

o. Footnote 19 to the Report states (p. 3 at p. 37), in discussing CIA's covert action role, that: "The CIA's real role is therefore spelled out in a series of top secret NSC directives (NSCIDs)." This is inaccurate. Covert action directives, such as the originating 10/2, are NSC Directives and not NSCIDs, the latter being a different series. The Report is led astray here by its reliance on poor or ill-informed sources. The last sentence of the footnote, based on a statement in Ransom's book, states that the DCI's participation in NSC meetings "suggests that the scope of Agency operations may be largely self-determined." The fact that the President presides over the NSC, whose membership includes the Vice President and the Secretaries of State and Defense, among others, would seem to negate this suggestion.

p. The second half of p. 3, par. 3 in the Report is somewhat confused. The operations authorized by NSC 10/2 were originally handled (commencing in June 1948) by a component of the Office of Special Operations. Mr. Wisner came in to take over these operations in the newly created Office of Policy Coordination on 1 September 1948. The statement in par. 3 that "A section was thereupon created by President Truman within the CIA" is placing too much administrative detail on the President. He merely assigned the functions to CIA by his approval of NSC 10/2. Nor, as this paragraph implies, was the Office of Special Operations created at the same time as OPC. The former Office was established (originally in CIG) on 11 July 1946. The Report is also incorrect in stating that the control of both Offices--OSO and OPC--was shared with the State Department and the Pentagon. This was true of OPC, which received policy guidance from State and the Pentagon, but was never true of OSO which was completely controlled by CIG/CIA from its inception. Even with the merger of the two Offices into the Directorate of Plans, CIA did not have "sole control over secret operations of all types." Policy guidance for covert action still continued to be given through a succession of mechanisms, starting with the Psychological Strategy Board, succeeded by the Operations Coordinating Board, down through the current Forty Committee.

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p. 7

g. As is customary, no comment will be made on the accuracy or inaccuracy of the CIA personnel and budgetary figures in the Report (top of p. 4). The use of the word "trade" in this paragraph (l. 9) is puzzling. However, a check of the source in footnote 24 (p. 4 at p. 37), the book by Marchetti and Marks, reveals that the word "trade" in the Report should be "training."

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II. DOMESTIC ACTIVITIES AND THEIR LEGAL BASIS

A. Domestic Surveillance and Infiltration

a. Footnote 25 (p. 4 at pp. 37-38) cites a New York Times article of 29 December 1974 as stating that a former CIA agent said he was one of several assigned to spy on anti-war groups in New York between 1968 and 1972. The Report does not take note of DCI Colby's Statement before the Defense Subcommittee of the House Appropriations Committee on 20 February 1975. In that Statement, the Director said, regarding the allegations in the cited New York Times article, that:

> Another allegation given prominence was apparently based on the statements of an anonymous source .... As I told the journalist involved before the story was printed, it does not bear any relation to CIA's actual activities in that area. Nor can we identify any former employee who answers to the journalist's description of his source. I fear that the journalist has been the victim of what we in the intelligence trade call a fabricator.

Footnote 25, in its second paragraph also cites a New York Times article of 8 January 1975 to the effect that CIA's mail opening operations were "alleged to have started in the summer of 1953." Actually, the Times article gives the date as "the summer of 1958."

b. The Report (p. 4, par. 3) states that in 1967, CIA and other government agencies adopted a statement of principles which provided that "the fact of government research support should always be acknowledged by sponsor, university and researcher." The footnote sources this quote to a law journal article by Prof. Walden, who in turn sources it to the New York Times of 12 August 1967. A review of our copy of the Times at the cited page discloses no such quotation.

c. The Report discusses (p. 5, ll. 1-6 and par. 1) the subject of CIA support to the National Student Association (NSA). The CIA aim was to preserve the freedom and integrity of NSA in whatever positions it chose to take. The Report distorts the NSA connection, which in part allowed the members to gain parliamentary expertise face to face with communist

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front groups abroad. Similar distortion appears in the lengthy quotation from Prof. Walden (p. 5, par. 1). He quotes one officer of NSA. Others could have been quoted per contra. It is also noted that footnote 32 (p. 5 at p. 38), which is the citation to the Walden article, gives the wrong page for the quote. It should be p. 188, not p. 185.

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B. Statutory Limitations Upon CIA Activities in the United States

a. There are several references in this section to President Truman's "executive order" of 22 January 1946. As noted above, (id.), this document is not an executive order; it is a Presidential Directive.

b. The opening sentence in section B (p. 5) states that "The only express statutory limitations upon the activities of the CIA are those found in section 102(d)(3) of the National Security Act of 1947 ... which provides that it shall be the duty of the Agency ...." The text then continues by quoting parts of sec. 102(d)(3). The only part of sec. 102(d)(3) quoted in the text here which contains a limitation upon Agency activities is the proviso against police subpoena, law-enforcement powers or internal-security functions. The earlier part of the quoted text sets forth duties and responsibilities and is not a limitation. The second quoted proviso regarding the protection of sources and methods is also not a limitation, and in any event it is a responsibility placed on the Director of Central Intelligence and not on the Agency.

c. The Report states (p. 6, par. 2) that, as finally passed, the National Security Act of 1947 "expressly adopted, generally verbatim, the powers and duties of the Agency and limitations thereon contained in the Order [sic]." One omission was paragraph 9 of the Executive Directive of 22 January 1946, quoted (p. 6, par. 1) in the Report. This limitation had originally been included in the Presidential Directive as a "late starter" at the request, or on behalf, of the FBI. Subsequently, CIG found that this proviso might make it impossible to talk to American travellers who had been abroad or American businessmen who could have information of value to contribute about matters overseas. After consultation with FBI Director Hoover, the latter stated that it was not the intent of the Bureau to block such activities; as a result, and because it was redundant, paragraph 9 of the Directive was omitted from the National Security Act as finally adopted.

d. The Report states (p. 6, par. 3) that:

> [T]here was no doubt in the minds of the supporters of the National Security Act of 1947 that the Agency's ... activities in this country were to be strictly limited to those directly related to the correlation and evaluation of such [foreign] intelligence.

This is not strictly correct. CIG had commenced collecting foreign intelligence from knowledgeable sources in the U.S. as a service of common concern, as

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noted in paragraph c. above. General Vandenberg, the DCI, had alluded to this in a passing remark in his Statement to the Senate Armed Services Committee in support of S. 758. In that Statement he referred to the "great open sources of information" available, including "general information from people with a knowledge of affairs abroad."

e. The Report (p. 6, in the first of two quotations from General Vandenberg's Statement at the bottom of the page) omits the word "to" between the words "and" and "avoid" in the second line of the quotation. Footnote 38 (p. 6, at p. 38) misspells General Vandenberg's name "Vandenburg."

f. The Report (p. 7, par. 2) cites Secretary Forrestal as "Secretary of War." Mr. Forrestal was never Secretary of War; he was, at that time, Secretary of the Navy.

g. The Report (p. 8, pars. 2, 3) discusses the "Keith" case in paragraph 2 and then tries to link it up, in a negative way, with the discussion in paragraph 3. The result is a non sequitur. The discussion in paragraph 2 of the Report involves the definition and alleged interchangeable usage of the terms "domestic security" and "internal security" by the Court in "Keith." Mention is then made of the examples that Court used for what is, and what is not, "domestic security." Paragraph 3 of the Report then starts off with the statement that:

> The Keith case notwithstanding, however, Messrs. Helms and Colby appear to have adopted a different definition of the term "internal security" ....

Use is then made of two quotations, one from Mr. Helms and one from Mr. Colby, to illustrate the attempted point. The only problem is that the quotes have nothing to do with a definition of "internal security," but rather relate to the respective responsibilities of the FBI and CIA for counterintelligence activities within the United States and abroad. (It should be noted in the second paragraph of the quotation from Mr. Colby's Statement (p. 8), that the text does not have the word "the" before "C.I.A.") The Report then continues (pp. 8-9) to discuss the case of Heine v. Raus. While the Court, in the "Keith" case did not define what internal security is, at least the Court, in the Raus case, gave one instance of what it is not.

h. Under the general heading "Domestic Activities Viewed as Permissible by the CIA," the Report lists (pp. 9-10) 18 items. Several are taken from the Hearing on the Nomination of Mr. Colby to be DCI. (Although included in the published record of the confirmation hearing, the cited items are actually taken from written replies to questions submitted by Senator Symington.)

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It would have been useful if the Report had included Mr. Colby's preamble sentence in answering Senator Symington's questions regarding CIA domestic activities. That sentence reads:

> Provided that CIA's activities within the U.S. are in the prosecution of foreign intelligence and do not contravene U.S. law, I believe they do not conflict with the statutory restriction against CIA involvement in domestic affairs. (Colby, Hearing at p. 157)

#1--On the List in the Report (p. 9) is "Recruiting, screening, training and investigating employees." This is sourced (fn. 46, p. 9 at p. 38) to the Colby nomination hearing. In the cited portion (which is the Colby written answer to the Symington question on domestic activities), Mr. Colby does not mention "investigating employees."

#6--The Report (p. 9) lists CIA contracting with U.S. industrial firms or research institutes for "research and development of technical intelligence devices." This is sourced (fn. 51, p. 9 at p. 39) to the Colby Report to the Senate Appropriations Committee, 15 January 1975. In that Report the DCI, in the context of #6, refers to "technical intelligence capabilities" a much broader term than "devices," although earlier in his text the DCI did use the phrase "technical intelligence devices." (However, that phrase appears on p. 30, col. 3 in the New York Times text, whereas fn. 51 cites cols. 4, 5.)

#13--This item is stated in the Report (p. 10) as "Protecting intelligence sources and methods within the Agency." This is sourced (fn. 58, p. 10 at p. 39) to the Colby confirmation hearing (at p. 25). That citation is a general discussion of the subject between Mr. Colby and Senator Symington, and does not include specifically the strange phrasing of #13 regarding such protection "within the Agency." In fact, Mr. Colby states in his answer that:

> My interpretation of that particular provision, Mr. Chairman, is that it gives me a charge but does not give me authority. It gives me the job of identifying any problem of protecting sources and methods, but in the event I identify one it gives me the responsibility to go to the appropriate authorities with that information and it does not give me any authority to act on my own.

#18--This item regards the supplying of equipment and safe houses to "other government officials" if used for a legitimate purpose (p. 10). It is sourced (fn. 63, p. 10 at p. 39) to Colby's confirmation hearing. In those hearings

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It would have been useful if the Report had included Mr. Colby's preamble sentence in answering Senator Symington's questions regarding CIA domestic activities. That sentence reads:

> Provided that CIA's activities within the U.S. are in the prosecution of foreign intelligence and do not contravene U.S. law, I believe they do not conflict with the statutory restriction against CIA involvement in domestic affairs. (Colby, Hearing at p. 157)

#1--On the List in the Report (p. 9) is "Recruiting, screening, training and investigating employees." This is sourced (fn. 46, p. 9 at p. 38) to the Colby nomination hearing. In the cited portion (which is the Colby written answer to the Symington question on domestic activities), Mr. Colby does not mention "investigating employees."

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(at p. 22), Mr. Colby only discusses providing such facilities to White House employees, not "other government officials."

i. In the section of the Report (p. 10) under the heading "Domestic Activities Viewed as Prohibited by the CIA," four items are listed, three of them sourced. The source of Item #2 is not given, but it is taken from the Colby nomination hearing (at p. 24).

j. The next section of the Report (pp. 10-11) is devoted to "Domestic Activities of the CIA in 'Gray Area.'" It comprises seven items.

#2--Places in the "gray area" the providing of covert assistance to American educational or voluntary organizations. However, footnote 68 (p. 10 at p. 39) states:

> Such assistance has been banned by the CIA by internal regulations, but this may have occurred not because the activity was thought to be unlawful but as a matter of policy.

The banning of such assistance was a result of the Report of the Katzenbach Committee on 29 March 1967. It placed this ban in its Statement of Policy, and the President, in a White House release on 29 March, stated: "I accept the Committee's proposed statement of policy and am directing all agencies of the government to implement it fully." The President's Statement and the Report were printed verbatim in the New York Times on 30 March. Thus, while footnote 68 is correct in that the legality of these acts was not at issue, the banning of them was not so much a matter of policy, but rather the result of a Presidential order to implement the ban as government-wide policy. Therefore, it would appear that the Report is incorrect in placing #2 in the "gray area." It is an activity viewed as prohibited by the CIA.

#3--Places in the "gray area" "Inserting agents 'into American dissident circles in order to establish their credentials for operations abroad.'" It might present a fairer picture, if the Report had included the beginning of the sentence it quotes, which comes from the Colby Statement of 15 January 1975, and reads: "In order to obtain access to foreign circles, the Agency also recruited or inserted about a dozen individuals into ...." Similarly, in footnote 69 (p. 10 at pp. 39-40), which sources #3 to the Colby Statement, it would have left a much less sweeping and more accurate picture if the entire Colby sentence had been quoted. The footnote says: "In 1973, such information [on American dissidents] was limited to that collected abroad." The full Colby sentence reads:

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> In 1973 this program was reviewed and specific direction given limiting it to collection abroad, emphasizing that its targets were the foreign links to American dissidents rather than the dissidents themselves ....

#7--This item (p. 11) places in the "gray area" various CIA activites (all domestic) such as surreptitious entry, physical surveillance, wiretapping, opening mail, and maintaining files on congressmen. Footnote 73 (p. 11 at p. 40), cites the Colby Statement of 15 January 1975 and a New York Times article of 6 March 1975 as the sources of these charges (the latter being on the DCI's appearance before Congresswoman Abzug's subcommittee). The footnote states that: "It is not clear whether Mr. Colby thought these activities were permitted or prohibited." A reading of the Colby statement, however, indicates that virtually all of these activities have been stopped by CIA. This is a rather clear expression of his view that they are in the "prohibited" category rather than in a "gray area."

k. In the conclusions which the Report draws (p. 11) from its listing of domestic activities allegedly viewed by CIA as "Permissible," "Prohibited," or in a "Gray Area," it states that Mr. Helms' view of foreign intelligence is "information associated with foreign happenings." Footnote 74 (p. 11 at p. 40) cites the Helms Statement of 16 January 1975 before the CIA Subcommittee of the Senate Armed Services Committee as the source. It would have been preferable if they had cited the whole Helms phrase, which reads: "information associated with foreign happenings that affect the national security." [Emphasis added.]

l. Again, in its first conclusion (see par. k above) the Report (p. 11) cites the Helms Statement of 16 January 1975 to the affect that the Agency's reason for being is to collect intelligence abroad. Footnote 76 (p. 11 at p. 40) argues: "It is interesting to note, however, that as originally envisioned, the CIA was to be, primarily a correlator and evaluator of intelligence gathered by others." This is incorrect. The members of the congressional committees who established CIA were well aware of CIA's role in clandestine collection. It was thoroughly considered in executive sessions by the committees, and CIA's primacy in this field was understood. It was also mentioned during the floor debate in the House.

m. Again, in its first conclusion (see par. k above), the Report states (p. 11) that:

> The support structure in the United States which the Agency believes is necessary to carry out its intelligence function now permeates our national life and society to a very substantial extent.

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It is difficult to cope with so gross an exaggeration of fact. The Report, which often seeks definitions in its text, does not indicate what a "very substantial extent" means. It then speaks of the "Agency's intrusion into domestic areas only distantly related to the field of foreign intelligence." The many citations in the Report to the statements of DCI Colby and Ambassador Helms should be ample examples that virtually all of the CIA "transgressions" were directly related in some manner to the foreign intelligence field or the protection of its intelligence sources and methods.

n. Conclusion #2 of the Report at this point (p. 11) presents the views of the committees which drafted it, and it is not CIA's role to argue with these conclusions, erroneous though the Agency feels they may be. This analysis is confined to errors in fact in the Report. However, it should be noted that in the last paragraph on page 11, the Report states that it is the Agency's view that the DCI's responsibility to protect intelligence sources and methods from unauthorized disclosure "constitutes authority to protect not only CIA files and sources, but all government documents and sources." We know of no responsible official who has ever expressed this view; or that the DCI's responsibility extends beyond the field of intelligence. All of the alleged "transgressions" cited in the Helms and Colby statements and testimony in this connection, have involved intelligence activities or the leaking thereof. In citing Mr. Colby's testimony at his confirmation hearing, footnote 77 (p. 11 at p. 40) only partially states Mr. Colby's view that the protection of intelligence sources and methods provision gives him "only the job of identifying a problem but no authority to deal with it." However, a few lines further along in this Colby testimony (at p. 25), Senator Symington asks: "Well, if I understand, if there is a Government official that should have such a responsibility, it should be yourself?" To which Mr. Colby replied: "For the intelligence field, I think it is myself no question about it."

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III. FOREIGN INVOLVEMENTS AND THEIR LEGAL AND CONSTITUTIONAL BASIS

A. Foreign Activities

a. The Report (p. 12, par. 2) takes note of "armed invasion of Cuba at the Bay of Pigs by a small army organized, paid and equipped by the CIA . . ." Footnote 80 (p. 12 at p. 40) sources this to the Colby confirmation hearing and the DCI's Address to the Fund for Peace Conference on CIA and covert action on 13 September 1974. All that Mr. Colby said at his confirmation hearing at the cited page was that:

> [A]s a practical matter a covert operation cannot be a very big one because it stops being covert when it gets too big. I think this was the lesson of the Bay of Pigs, among other things.

In his Address, also cited in footnote 80, the DCI said about the same thing.

b. The Report states (p. 12, par. 2) Mr. Colby has emphasized that the appropriate congressional committees were informed of the war in Laos (presumably referring to the CIA role). In his Address, which is cited as a source in footnote 84, (p. 12 at p. 41), Mr. Colby said, and it is quoted here for emphasis, the CIA activities in Laos were "reported to and appropriated for on a regular basis by the authorized elements of the Congress--the war was no secret from them." On 2 May 1961, Allen Dulles, then the DCI, briefed the Senate Foreign Relations Committee on the details of CIA's role in Laos. (This predated the Geneva Accords of 1962 and the "war" in Laos.) Since then, various Senate committees and subcommittees have been fully briefed on CIA's role in Laos on 35 occasions (as of July 1973). As of the latter date, a total of 57 senators have been briefed at one time or another on the CIA role in Laos.

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c. The Report cites (p. 12, par. 2) a statement by Senator Ellender, then a member of the CIA Subcommittee of the Senate Appropriations Committee, that he had not been informed of "CIA plans to spend money on an army of 36,000 in Laos." While the Report correctly sums up Senator Ellender's colloquy with Senators Fulbright and Cranston on this point, Senator Ellender's responses have always been puzzling to us. Commencing in September 1969, Senator Ellender had been at several CIA Appropriations Subcommittee meetings which had covered CIA operations in Laos in some detail. In fact, he had chaired such a briefing in June 1971, less than six months before the statements were made which the Report cites. Whether the Senator's memory failed him, or he felt he should not make an admission because of security, it is impossible to say.

d. The Report states (p. 12, par. 3) that funds were made available to CIA from 1970-73 to be expended in Chile for such activities as "campaigns of anti-Allende candidates." Footnote 87 (p. 12 at p. 41) cites the New York Times of 8 September 1974 as the source. It would have been clearer if the Report had more completely noted the full New York Times statement of that date which cites Mr. Colby's to the effect that such funds had been provided for "anti-Allende candidates in municipal elections last year." [Emphasis supplied.] This is an important distinction, in the light of Ambassador Helms' testimony before the Senate Foreign Relations Committee on 22 January 1975, as reported in the New York Times on 10 February 1975 (fn. 88, p. 12 at p. 44). The article in the Times correctly notes Mr. Helms' denial that any funds were passed to candidates who were running against Allende for the Presidency in 1970.

e. Footnote 88 (p. 12 at p. 41) also cites Part I of the Hearings on ITT and Chile held in 1973 by the Subcommittee on Multinational Corporations of the Senate Foreign Relations Committee, and in particular p. 172 of those hearings (Testimony of ITT Senior Vice President Gerrity). The footnote says that Gerrity held a meeting with William Broe of CIA "on September 29 or 30, 1970." The alternative dates of 29 or 30 September come from a question put to Broe by Senator Church, but the footnote does not cite this testimony although this is where these dates surface. As a matter of fact, the paragraph in which these two dates appear (Hearings, pt. 1, p. 250) is headed "September 29 meeting with Gerrity." Furthermore, p. 172 of the Hearings, which the footnote does cite, describes a memorandum of conversation which Gerrity prepared following his meeting with Broe, and on p. 171 of the Hearings, it states that the memo is dated September 29, 1970. This should have pinned down the date. The footnote then says that Broe "suggested a series of possible actions" designed to put economic pressure on Chile." Actually, what the Gerrity

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memorandum said, as quoted on the cited page of the Hearings (p. 172), is that Broe "made suggestions based on recommendations from our [ITT's] representative on the scene and analysis in Washington." Therefore, according to the memo, Broe's "suggestions" were largely based on ITT recommendations, rather than those of CIA, which is rather different from what the footnote suggests. In his oral testimony, however, Gerrity (on p. 172) then characterizes them as Broe's suggestions, as opposed to Gerrity's memo (described above) quoted on the same page. At best, both the footnote and the Hearings are confusing. Senator Church then continues to read from the Gerrity memo the five points that are quoted in footnote 88 (p. 12 at p. 41). In Item 5 of this list in footnote 88, the word "has" has been inserted in the third line of Item 5. This word "has" does not appear in the quoted Hearings at p. 172.

f. The Report cites (p. 12, par. 3) President Ford's press conference of 16 September 1974 (as printed in the New York Times the next day). The Report says:

> President Ford subsequently stated that the covert funds had been spent in Chile to "preserve opposition political parties," but said that he would take no position on whether such CIA activities were permitted by international law.

Nowhere in the President's answers (or in the questions which elicited the replies) is there any specific reference to CIA's expenditure of covert funds. In merely quoting President Ford's statement to "preserve opposition political parties," the Report pulls the statement somewhat out of context. The President said:

> In a period of time three or four years ago, there was an effort being made by the Allende Government to destroy opposition news media, both the writing press as well as the electronic press. And to destroy opposition political parties. And the effort that was made in this case was to help and assist the preservation of opposition newspapers and electronic media and to preserve opposition political parties.

The Report, as noted above, also cites the President as saying he would take no position on whether such CIA activities were permitted by international law. What the President said, in answer to a subsequent general question, and without specific mention of CIA, was that: "I'm not going to pass judgment on whether it's permitted or authorized under international law."

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g. In footnote 89 (p. 12 at p. 41), the Report cites The Invisible Government by Wise and Ross as the source of describing CIA "as organizing a putsch in Iran in 1953." Actually, Wise and Ross do not use the word "putsch" in their section on the Iran operation. They describe the operation as a "coup" or "coup d'etat." The footnote cites the same source when saying that CIA arranged a coup in Guatemala in 1954, replacing "the government of Jacobo Arbenz Guzman with that of Colonel Elfego Monzon ...." This is not completely accurate. The principal figure in the overthrow was Colonel Castillo Armas. Arbenz resigned on 27 June 1954, and was replaced by Colonel Diaz, who resigned on 29 June. Col. Monzon then headed a junta, which Castillo Armas joined. The latter became head of the junta in early July; the other members resigned at the end of August, leaving Castillo Armas in complete control, and he was proclaimed President following elections shortly thereafter.

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B. Statutory Framework for CIA Covert Political Operations

a. The Report correctly cites (p. 13, par. 1) 50 U.S.C. 403(d)(5) as the legal justification used for the performance of covert operations. Footnote 90 (p. 13 at pp. 41-42) then states that subsections (d)(3) and (4) "are sometimes also used to justify the CIA's covert activities." The footnote specifically quotes the protection of sources and methods proviso in subsection (d)(3). This is incorrect. Neither subsection (d)(3) nor (4) is used as the legal basis for covert action operations abroad. Footnote 90 misquotes Director Colby's 15 January 1975 Statement to the Senate Appropriations Committee when it cites him as making the distinction between "clandestine operations to collect foreign intelligence and counterintelligence responsibilities" on the one hand and "covert foreign political or paramilitary operations" on the other. What the DCI enumerated was "To conduct clandestine operations to collect foreign intelligence, carry out counterintelligence responsibilities abroad, and undertake--when directed--covert foreign political or paramilitary operations."

b. The Report states (p. 13, par. 1):

> Prior to the passage of the Foreign Assistance Act of 1974 ... foreign covert operations not directly linked to the gathering of intelligence were justified under the fifth and last of the duties established for the CIA under the National Security Act of 1947.

This implies that such activities can no longer be carried out under that provision of the National Security Act. This is incorrect, as section 50 U.S.C. 403(d)(5) coupled with the inherent powers of the President are still the basic authority for covert action operations. Section 32 of the Foreign Assistance Act of 1974 amends the Foreign Assistance Act of 1961 by adding a new sec. 662 which is designated "Limitation on Intelligence Activities." This new section does not change the basic authorizing legislation; it merely adds some procedural limitations. Nor does the Foreign Assistance Act use the phrase "foreign covert operations not directly linked to the gathering of intelligence." There is no such direct linkage, although intelligence is an occasional by-product of covert action and covert action is a function of intelligence. What the Act says is "operations in foreign countries, other than activities intended solely for obtaining necessary intelligence."

c. Footnote 95 (p. 13 at p. 42) is a miscitation. The correct citation is 50 U.S.C. sec. 402(b)(1).

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d. In quoting sec. 402(d) of the National Security Act (p. 14, l. 4), the Report starts the quotation "to make ...." The word "to" does not appear in the statute at that point. The section is also miscited in footnote 97 (p. 14 at p. 42). The correct number of the section is 402(d).

e. Commencing with part III, B, of the Report (p. 12), the authors attempt to show that CIA has no statutory authority to conduct covert action operations, and that the National Security Council (NSC) has no statutory basis for delegating such authority. This is summarized in the Report (p. 14, par. 1), which states that the powers which Congress gave the NSC "were either of an advisory nature or were related to the coordination of the policies and functions of the other agencies in the national security area." Of course the NSC powers quoted here are advisory; no agency of the Executive branch can direct the President. The latter power is often within the jurisdiction of the legislative and judicial branches. The Report does not point out here that the President is a member of the NSC--its presiding officer. However, as President, he can accept or reject its recommendations; an NSC Directive is the President speaking through his advisors in council. Furthermore, in describing the NSC's powers as "of an advisory nature or were related to the coordination ...." The Report overlooks section 103(d) of the National Security Act of 1947, the preamble of which states that "... it shall be the duty of the Agency, under the direction of the National Security Council ...." [Emphasis supplied.] The Act then lists five duties of the Agency, including the one cited in the Report as the source of CIA's statutory claim to perform covert action operations--"to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." [Emphasis supplied.] Here again, the NSC has directive authority. The Report concludes (p. 14, par. 1) from its reasoning that "Nowhere is the NSC directly given the power to conduct political operations." This is correct in that the NSC is not an operational agency of the Government. Its statutory authority is to advise, coordinate and to direct the activities of CIA. The Report then continues that it is difficult for CIA to maintain that it conducts its covert action operations as a delegation of power from the NSC, as the NSC has no such power to delegate. CIA does not claim such a delegation, but rather bases its authority in this field on its statutory provisions under the direction of the NSC.

f. The Report states (p. 14, par. 2) "in the provision of the National Security Act of 1947" and proceeds to quote portions of 50 U.S.C. 403g (fn. 98, p. 14 at p. 42). The quoted provisions are not a part of the National Security Act of 1947. They are taken from sec. 7 of the Central Intelligence Agency Act of 1949. It is interesting to note that, at the end of the text of

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50 U.S.C. 403g (which is the codification of sec. 7 of the CIA Act of 1949), there is an explanatory sentence which reads: "Section was not enacted as a part of the National Security Act of 1947 which comprises this chapter." In quoting sec. 403g, the Report states further that:

> This means either that nonintelligence covert activities were not contemplated by Congress or that such activities were not intended to be exempted from the disclosure laws, an interpretation which is unlikely since it would render any such activities ineffective.

The basic error in this statement is that CIA does not conduct any "nonintelligence covert activities"; such activities are all "related to intelligence affecting the national security," as provided by the statute.

g. The Report (p. 14, par. 3) is rather loosely drawn. It mentions "CIA's covert activities not directly related to the gathering of intelligence." Covert activities, while employing many intelligence sources and techniques, are not primarily used for the "gathering" (i.e., collection) of intelligence, although such collection may well be a by-product of such operations. Furthermore, the Report continues, such operations are sometimes "inconsistent" with CIA's "basic purpose, that of gathering sufficiently detailed and accurate information to enable our Government to formulate foreign policy." The "gathering" of intelligence is not CIA's basic purpose; it is one of its duties. Such intelligence is normally of small value until it is collated and evaluated, two "basic" duties of CIA, in addition to collection. Nor is the end product of use only in the formulation of "foreign policy"; it is used in the formulation of policies affecting the national security, a much broader term. The Report then states that: "To the extent that the CIA's activities conflict with rather than assist in the formulation of foreign policy, congressional purpose would appear to have been thwarted." CIA activities do not "conflict" with U.S. foreign policy, they are supportive. The NSC, and its committee mechanisms for the approval of CIA covert activities, to say nothing of the President, would certainly discipline any Director who acted counter to American national security (including foreign) policy. (It should be stressed that "national security policy," as used herein, does not include any internal security functions.)

h. The Report (p. 14, par. 4) quotes from a law review article by Prof. Walden, in which he states that, in CIA's legislative history, there is nothing apparent that Congress intended that the Agency engaged in "subliminal warfare." Further, Walden states that "The CIA was touted as being an exclusively an intelligence coordinating body, and it was created as such." These sentences follow Prof. Walden's discussion, in his cited

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article, of both the National Security Act of 1947 and the Central Intelligence Agency Act of 1949. By his phrase "subliminal warfare," one presumes that Walden is talking about covert action operations. It is true that there is nothing in the open congressional debates of any moment during the discussions of the National Security Act of 1947. Covert action was not a factor at the time. However, it was certainly discussed in the closed hearings during consideration of the Central Intelligence Agency Act of 1949, as covert action operations were becoming an important factor by then. Walden is wrong, moreover, when he says that CIA was created "exclusively" as an "intelligence coordinating body." As stated elsewhere in this paper, the Congress was well aware that CIA would correlate and evaluate intelligence for the senior policy makers of the government (i.e., intelligence production), and the appropriate committees heard testimony in executive sessions regarding the functions of CIA in the field of clandestine collection. Footnote 101 (p. 14 at p. 42) again cites Walden's article at p. 82. It is interesting to note that he there quotes testimony by Admiral Nimitz that the National Security Act of 1947:

> [W]ould establish an organization known as the Central Intelligence Agency, charged with the responsibility for collection of information from all available sources, including Government agencies .... [Emphasis added.]

Mr. Walden might also have quoted the remarks of Cong. Holifield during the floor debate, when he said:

> I want to impress upon the minds of the Members that the work of this Central Intelligence Agency, as far as the collection of evidence is concerned, is strictly in the field of secret foreign intelligence, what is known as clandestine intelligence.

i. The Report (p. 14, par. 4) misquotes Walden's correct quote of Cong. Patterson. The phrase should read "operational procedures," not "operation procedures."

j. The Report (pp. 14-15, commencing at last par. on p. 14) is in error (and to some extent self-contradictory) in its statement that: "CIA was intended for intelligence gathering purposes only." In support of this statement, the Report cites the House Committee Report accompanying the National Security Act of 1947 to the effect that CIA was created to furnish information to the NSC so that the latter might have available "adequate information" in advising the President. What the Report is implying here is that CIA will furnish information, collected from all sources, collated, and properly evaluated for NSC deliberations. The quotations from the House Report in this

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paragraph are correctly quoted, with citation to footnote 103 (p. 15 at p. 42) which correctly cites the House Report but adds "as quoted in Wise & Rose," [The Invisible Government] at p. 10. First one must note that the name of the second author of that book is Ross, not Rose. Secondly, there is no reference, nor any quotations, from the House Report at p. 10 of their book. That page is about the Bay of Pigs.

k. The Report states (p. 15, par. 1):

> ... the only clear congressional authorization for the CIA to conduct covert activities ... is contained in Section 663 of the recently enacted Foreign Assistance Act of 1974 ....

This is an incorrect reference. The section of the Foreign Assistance Act of 1974 which they are citing is section 32 of that Act. Section 32 enacts an amendment to the Foreign Assistance Act of 1961, to be numbered sec. 662 in the latter Act. The Report then quotes the text of the amendment, "Sec. 663." This is also not the correct citation. The correct citation for the amendment is section 662 which is the section the Report quotes, although not completely accurately. Subsection (b) of the amendment should read:

> (b) The provisions of subsection (a) of this section shall not apply during military operations initiated by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolution. [Emphasis added.]

The underlined portion of subsection (b) was not quoted in the text of the amendment in the Report, and there is no indication that it was deliberately omitted. Furthermore, footnote 105 (p. 15 at p. 42), which gives the legal citation for the Foreign Assistance Act of 1974, misdates it as December 31, 1974. The correct date is December 30, 1974.

l. The Report states (p. 16, l. 7) that the "basic concern" of section 663 [sic; section 663 has no applicability to CIA] is "the expenditure of funds by the CIA." This is incorrect. The "basic concern" of section 662 is a matter of foreign policy considerations--to allow the appropriate committees of the Congress to know what covert action operations are being conducted by CIA in support of American foreign policy, and to make certain that such operations are at least known to the appropriate committees of the Congress which deal in foreign affairs.

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B. [probably should be C] Imposition of Substantive Standards in Foreign Political Activities

a. Footnote 106 (p. 16 at p. 42) states that one of the Bar Association committees which prepared this Report suggests that Congress should take action to prevent CIA from engaging in "foreign political operations" and "assure that the CIA will confine its activities to those intelligence-related activities permitted by its charter." CIA does not engage in activities abroad which are not "permitted by its charter."

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C. [probably should be D] International Law

a. The Report (pp. 16-18) argues that CIA activities which violate our international treaties abrogate the international obligations of the United States. Various treaty provisions and citations to legal comments are set forth. However, the weakness of these arguments is suggested in the Report (p. 18, par. 3) when it states that "some questions may exist under the principles of international law." Furthermore, the Executive and the Congress have clearly intended, in expressions of their opinions, that CIA continue its traditional tasks, including covert action. No obligation of the United States undertaken pursuant to international law was intended by the United States Government to modify the scope of these tasks.

b. The Report cites (p. 16-17, par. 4, at p. 17) certain remarks by Prof. Quincy Wright as published in the Proceedings of the American Society of International Law (1969). The correct citation is at pp. 28-29 of the Proceedings, not pp. 8-9.

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D. [probably should be E] Constitutional Issues Regarding Foreign Covert Political Activities

a. Footnote 123 (p. 19 at p. 43) cites the editor of the cited work as N. Farrand. It should be M. for Max.

b. The Report (p. 19, par. 5, p. 20) cites the Bay of Pigs operation as a usurpation of congressional power "to raise and support Armies" and to "declare War" as set forth in the Constitution. This is highly doubtful. There was no war; and nothing in the Constitution prohibits Cubans from banding together to attempt to regain their homeland, regardless of how financed. The constitutional concept that Congress would have the authority to "raise and support Armies" would appear to be addressed solely to their right with regard to American troops.

c. The Report (p. 20, ll. 1-3) also attacks as unconstitutional CIA support of a "large army in Laos without congressional knowledge." This has been discussed under III. A., supra. Suffice it to say again what Mr. Colby is quoted as saying in par. III. A. b., supra, namely that CIA activities in Laos were "reported to and appropriated for on a regular basis by the authorized elements of the Congress--the war was no secret from them." It is to these "authorized elements" that Congress has delegated the authority to approve CIA appropriations. The Report, therefore, is in error (p. 20, ll. 5-6) in saying that the Congress was not involved in either the Bay of Pigs or the Laotian operations. It should also be recalled that Senator Fulbright, Chairman of the Senate Foreign Relations Committee, had been apprised of the forthcoming Bay of Pigs operation and sat in on President Kennedy's climatic meeting on 4 April 1961. While he expressed vigorous opposition to the plan as being out of proportion to the threat, his grounds for opposition were more on moral issues than any usurpation of congressional authority; and, despite his personal opposition, Senator Fulbright maintained the security of the operation.

d. Virtually the whole text of the Report at this point (p. 20, par. 1 through p. 21, l. 4) is based on erroneous premises. The whole text here ignores the role and position of the Presidency, the opinion of a long succession of Attorneys General, and the approval of the congressional leadership and designated subcommittees of the Congress. The Report states (p. 20, par. 1) that, in actions such as the CIA role in Chile, CIA "apparently" breached treaties and undermined the constitutional role of the Senate. This has been discussed under III. C., supra. To reiterate what we said there: Covert action is a traditional part of the right of self-preservation. The Executive and the Congress have clearly intended, in expressions of their opinions, that CIA continue its traditional tasks, including covert action.

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No obligation of the United States undertaken pursuant to international law was intended to modify the scope of these tasks. Even the Report is not sure of its ground here, when it merely alleges that CIA "apparently" breached treaties.

e. The Report (p. 20, par. 2) recommends, inter alia, that CIA have an internal "Inspector General" with a right to take administrative action, and the mandatory rotation of senior officials. CIA has long had an Inspector General, reporting directly to the Director of Central Intelligence. In the tradition of such positions, it is a staff responsibility, but his recommendations are not lightly taken. Virtually all senior CIA officials are rotated with some degree of regularity.

f. The Report states (p. 20, par. 3) that Congress has relinquished to CIA "its own constitutionally-based responsibility in the formulation of our foreign policy." With certain special exceptions not pertinent here, the Constitution is silent on the congressional role in foreign policy, outside of the power of appropriation. Furthermore, CIA does not make foreign policy by its actions. That is the prerogative of the Executive, and CIA's role is supportive.

g. The Report states (p. 20, par. 6 - p. 21, l. 4) that much classified and sensitive information has been furnished to the Congress by the Government over the years under appropriate safeguards as to disclosure. However, the leaking of CIA material can be costly to the very lives of CIA personnel or its sources abroad, and can have serious effects on the Agency's liaison arrangements with foreign governments. To describe CIA personnel, as the Report apparently implies, as "a small number of unaccountable bureaucrats" is completely untrue and an unwarranted and undeserving slur on a very dedicated group of public servants totally accountable to the designated committees in the Congress.

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IV. BUDGETARY PROCEDURE AND ITS STATUTORY BASIS

A. Funding Arrangements: The Present Process of Appropriation

a. The Report queries (p. 21, par. 1) why Congress has not acted sooner to prevent CIA from "carrying out foreign policy abuses." While it may be that CIA has conducted activities abroad with which some members of the Congress might disagree as a matter of policy, CIA has never carried out such "foreign policy abuses."

b. Footnote 135 (p. 21 at p. 43) states that the description of CIA budgetary procedures is "adapted" from an article by Robin Schwartzman in the N.Y.U. Journal of International Law and Politics. At the cited pages in the Schwartzman article, she in turn gives the source of some of her information as a telephone interview with "Samuel Preston, Staff Assistant, House Appropriations Committee." Preston's first name is Ralph, not Samuel. The Report (p. 21, par. 3) is in error in stating that the CIA budget is considered by the Intelligence Subcommittees of the Appropriation Committees of the House and Senate. While it qualifies this statement by saying "Until the present Congress ....," it does not state that, commencing with the present (94th) Congress, the CIA budget is handled by the full Defense Appropriations Subcommittee in the House. The Report is generally correct in stating that the Senate Intelligence Appropriations Subcommittee does not keep a stenographic transcript of the CIA hearings. However, there have been occasions in the past when such transcripts were made, and such transcripts have been made in the current Congress. The Report then states that once the Subcommittee decides the amount of the CIA budget, "it then divides up and disguises it in various appropriations." Actually the locations in which the CIA budget will be placed are decided by the Agency and OMB in advance; the subcommittees reach a judgment as to final amounts and approve the final allocations.

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B. Statutory Basis and Constitutionality of Appropriations Process

a. The Report states (p. 22, par. 1) that section 6 of the CIA Act of 1949 "provides," and then quotes the Act. Footnote 144 (p. 22 at p. 44) correctly cites the section as quoted as 50 U.S.C. § 403f. It is therefore misleading for the text to cite this as section 6 of the Act of 1949, because the quoted text reads slightly differently because of the codification references in the quote. Similarly, the Report gives a few lines of what it denotes as section 10(a) of the CIA Act of 1949, while footnote 145 (p. 22 at p. 44) gives the Code citation. Actually here there are no differences in the quoted material.

b. The Report (p. 22, par. 3 - p. 23, l. 6) suggests that, in passing the CIA Act of 1949, Congress did not intend to exempt CIA from substantive limitations on expenditures enacted by subsequent Congresses, "but only to free it from compliance with technical funding limitations." The Report finds support for this suggestion in the fact that section 6(a) of the 1949 Act is followed by several sections [presumably secs. 6(b)-(e)] "exempting the CIA from other technical limitations ...." This is a misreading of the statute, because the limitations in subsecs. 6(b)-(e) in effect authorize CIA freedom from certain general statutory limitations, but these are not limitations on appropriations as suggested by the Report and the law journal article cited in support (fn. 147, p. 23 at p. 44). The authorizations for CIA expenditures contained in section 10(a) of the CIA Act of 1949 (Report at p. 23, ll. 6-10) are not limitations on appropriations. Most of these items are not new; they are similar in language to the OSS appropriations language.

c. The Report is quite misleading (p. 23, par. 1) in its presentation and "quotation" from Admiral Hillenkoetter's letter to Chairman Tydings. This paragraph attempts to give "Further support for the view that the 1949 Congress did not intend to exempt the CIA from future substantive limitations on expenditures." It then "quotes" Admiral Hillenkoetter's letter to Chairman Tydings of the Senate Armed Services Committee, stating that the DCI "assured Congress" that: and then giving the quote. However, the material "quoted," although it does appear in the Admiral's letter, is material that is itself in quotation marks there which the Admiral quoted from the Senate Committee Report which accompanied the CIA Act when it was first reported out in 1948. Thus, the quotation is not the DCI assuring the Congress, but rather the Congress assuring the American people. Furthermore, the material quoted commences with the phrase "In almost all instances...." This is true. Most of the provisions of the Act of 1949 have to do with "housekeeping" activities, such as procurement, travel, overseas

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allowances, and the like. These are all modeled on, or allow the use of, legislation already on the books, such as the Foreign Service Act of 1946 and the Armed Services Procurement Act of 1947. What is different are the provisions with regard to appropriations, certain expenditures of funds, and exemptions from limitations on appropriations.

d. The Report states (p. 23, par. 2) that "An identical assurance [as cited in the previous paragraph of the Report, which is commented on in par. d, supra] was given to the House of Representatives by the sponsor of the bill, Representative Sasscer." Footnote 149 (p. 23 at p. 44) in support of this statement cites a law journal article by Prof. Futterman. In that article, Prof. Futterman quotes Cong. Sasscer as follows: "with one or two exceptions ... there is no authority in this bill which at some time or other has not been granted to some other agency of Government ...." What is important here, is what was omitted at the ellipses from Cong. Sasscer's statement. The quotation actually reads: " ... with one or two exceptions to which your attention will be drawn ...." [Emphasis supplied.] The Congressman then went on to an exposition of the proposed legislation, section by section.

e. The Report states (p. 23, par. 3) that the authority of the 1949 Act concerning expenditures "does not free the CIA from compliance with later substantive restrictions on spending, such as those contained in the Foreign Assistance Act of 1974." The implication in this statement is that CIA does not comply with restrictions which are specifically directed at the Agency's expenditures. Obviously, the Agency does comply with such restrictions.

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C. The Present Accounting Procedure

a. The Report states (p. 23, par. 4) that "No agency within the executive branch has a statutory duty to audit CIA expenditures ...." In fact, there is no agency in the executive branch authorized to audit any agency of the Government. Such audits are performed by the General Accounting Office which is a part of the legislative branch.

b. The Report implies (p. 23, par. 4) that OMB treats CIA differently from other agencies of the Government. While it cites the Schwartzman law journal article in support of the text (fn. 152, p. 23 at p. 44), the text of the Report is not as accurate as its source in this respect. OMB gives CIA budgetary requests and submissions as detailed and careful a check as it gives to any agency of the Government.

c. The Report states (p. 23, par. 4 - p. 24, l. 2) that because of CIA's "hidden appropriations procedure," the Treasury's Combined Statement "contains no mention of monies received and expended by the CIA." If this statement were true, the Combined Statement would not be accurate or in balance. But actually the CIA totals are included in the Combined Statement; they are simply not designated as such for reasons of security.

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D. Statutory Basis for the Present Accounting Procedure

Originally the General Accounting Office (GAO) audited CIA's normal departmental expenditures. When it expanded its audit to a management type comprehensive audit, GAO felt it could not do so without access to those CIA expenditures which were placed by law solely on the certification of the Director of Central Intelligence. Therefore, GAO recommended that it withdraw from any CIA audit. This was approved by the House Armed Services Committee.

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E. The Constitutionality of the Accounting Procedure: The Richardson Case

a. The Report states (p. 27, par. 2) that the CIA Act of 1949 allows the DCI "far more authority to operate secretly than any other agency head." This is correct, and that was the intent of Congress when it enacted the law. The Report ignores the Senate debate on 4 June 1974 on the Proxmire amendment which would have the DCI report each year to the Congress, on an unclassified basis, the total figure requested for the Intelligence Community. This proposal would not break the figure down by agency; just one total figure for the Community. The Proxmire proposal was defeated by a vote of 55-23, again showing the intent of Congress on the secrecy of the intelligence budget. It is also interesting to note that the proposed special funding authorizations in the CIA Act of 1949 were approved, when this legislation was being introduced in 1948, by the then-Comptroller General, Lindsay Warren. At that time, in taking cognizance of the "much wider authority" granted under this bill than the Comptroller General would "ordinarily recommend for Government agencies generally," Mr. Warren stated:

> ... the purposes sought to be obtained by the establishment of the Central Intelligence Agency are believed to be of such paramount importance as to justify the extraordinary measures proposed therein. ... in an atomic age, where the act of an unfriendly power might, in a few short hours, destroy, or seriously damage the security, if not the existence of the nation itself, it becomes of vital importance to secure, in every practicable way, intelligence affecting its security. The necessity for secrecy in such matters is apparent, and the Congress apparently recognized this fully .... Under these conditions, I do not feel called upon to object to the proposals advanced ....

b. Footnote 165 (p. 27 at p. 45) points to the Atomic Energy Commission as an example of "an agency related to the national security whose budget is made public in some detail," including the amount available for confidential expenditure, and questions whether the CIA budget should be published in the same manner. The differences between the AEC and CIA are so obvious as to negate the question. The AEC has no secret intelligence operations abroad; the lives of its personnel are not threatened by hostile action overseas. The footnote then continues to cite some remarks of Mr. Colby in connection with the possible publication of the CIA budget figure. It cites the source as

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"Testimony, Fund for Peace Conference, September 13, 1974, at 47." This citation to Colby's views has not been found. In the Report, Mr. Colby's statement to the Conference is always cited as "Address." Nor did Mr. Colby testify; he made an address and answered questions. One question had to do with the possible publication of the CIA budget. In reply, Mr. Colby said:

> With respect to the budget, the release of a single figure, one year at a time, would not create a serious security problem. But if you continue that over a few years, one could draw trend lines ....

This is somewhat different than the statement in footnote 165 which says:

> ... Mr. Colby has stated that publication of the total CIA budget would not threaten the national security, except insofar as trends in intelligence expenditures discernible after several years might reveal changes in priorities. [Emphasis added.]

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V. THE RANGE OF REMEDIES

1. Congressional Review of Foreign Political Activities: Prior Approval or Later Disclosure

a. The amendment to the Foreign Assistance Act of 1961 (added by sec. 32 of the Foreign Assistance Act of 1974) adds sec. 662 on CIA, not sec. 663 as stated in the Report (p. 32, par. 4).

2. Composition and Powers of Oversight Committees

a. The Report states (p. 33, par. 4) that "Regular reporting and submission of a proposed budget to a carefully organized joint committee representing all segments of Congress, should be a minimum." It is noted that even with a joint committee, it will be necessary for the Agency, as is true of every government agency, to seek its appropriations from the Appropriations Committees of the House and Senate.

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VI. RECOMMENDATIONS

a. The Report states (p. 33, recommendation 1) that CIA's "domestic activities--viewed as legitimate by the Agency--so pervade our national life and society as to make such restriction [against internal security functions] and prohibition almost meaningless." This statement is much overdrawn.

b. The Report cites (p. 33, recommendation 1) Mr. Colby's report to the Senate Appropriations Committee on 15 January 1975 regarding proposed amendments to CIA's legal authorities. In noting the DCI's suggestion to strengthen the prohibition language against internal security functions, the Report says:

> However, this prohibition would be "supplemented" by an additional proviso preserving for the CIA the right to carry on within the United States any activity "in support of its foreign intelligence responsibilities ...." It is difficult to determine which of the domestic activities now regarded by the CIA as not prohibited even though they appear to involve internal security functions, would be curtailed under such a proviso.

In the first place, Mr. Colby did not say "any" activity, but merely "activities." Secondly, Mr. Colby, in the very next paragraph of his Report to the Committee, lists six examples of what these "activities" would include. Therefore, the proviso does not make it "difficult to determine" what the Director's meaning is.

c. The Report (p. 34, recommendation 3) is quite confused on the subject of the Director's use of his responsibility to protect intelligence sources and methods from unauthorized disclosure, and recommends that this authority be eliminated. They suggest, in regard to such protection outside the United States, that the authority to protect intelligence sources and methods is "implied as part of the Agency's intelligence-gathering function." The Report is incorrect in this, for there is no other provision in CIA statutes in which such authority is "implied." The Report states that "Any protection of domestic sources and methods other than routine safety measures which may be necessary must be carried out by the FBI." There is no indication as to what is meant by "routine safety measures." Nor does the protection of intelligence sources and methods extend, as the Report states, to "all Government documents and sources." CIA's use of the proviso is strictly for intelligence purposes. The Report also overlooks the use of this proviso in the case of Heine v. Raus and the two Marchetti cases, all three of which were upheld by the Circuit Courts, with certiorari denied.

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d. The Report states (pp. 34-35, recommendation 4) that in effect neither the National Security Act of 1947 nor the CIA Act of 1949 contains "any express authority" for CIA to undertake "foreign political operations." The very next sentence of the Report, however, speaks of the amendment contained in the Foreign Assistance Act of 1974 requiring reports on such operations. Thus, in effect, Congress continues to recognize and ratifies CIA's authority to conduct such operations, although the Report indicates there is no such authority. Furthermore, the Report is in error (p. 35, ll. 2-3) when it cites the Foreign Assistance Act of 1974 as representing a congressional attempt to increase CIA's "accountability to Congress for its overseas activities." The Act (sec. 32) specifically exempts from its provisions foreign "activities intended solely for obtaining necessary intelligence." The Report then continues (p. 35, ll. 3-5) to the effect that "Congress has a constitutionally-based responsibility as a partner with the Executive in the establishment of foreign policy ...." This is a very broad interpretation of the Constitution, which assigns to the Congress in general and the Senate in particular rather limited acitivities in this field--outside of the power of the purse. The Report then continues that "the oversight committee should therefore consider any CIA political operation in the light of the foreign policy goals of Congress." The Report, in its recommendations, does not specifically recommend an oversight committee, so it is difficult in this quotation to determine what "oversight committee" means. But in talking about the "foreign policy goals" of Congress, it certainly overlooks the foreign policy goals of the Executive Branch, which are of major importance. The Report then continues (p. 35, ll. 7-9) that if the "committee members" [presumably the members of an undefined oversight committee] find that a particular CIA activity conflicts with the foreign policy goals of the Congress, "congressional policy should be ascertained without revelation of specific details to Congress as a whole." How this could be done is not explained. These particular recommendations fly in the face of the Presidential authority in the conduct of foreign relations, and are certainly questionable under the doctrine of separation of powers--a doctrine which the Report apparently does not recognize.

e. The Report states (p. 35, recommendation 5) that "the Constitution requires that at least the total [CIA] budget must be separately and knowingly appropriated by Congress." This would appear to be a misreading of the first phrase of Article I, sec. 9, clause 7 of the Constitution, which reads: "No money shall be drawn from the treasury, but in consequence of appropriations made by law ...." The CIA appropriations are included in appropriate appropriations legislation enacted by the Congress in accordance with provisions of the CIA Act of 1949. The second paragraph of recommendation 5 (p. 35) is also misleading, because the Report has confused the oversight function with the

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appropriations power which resides in the Appropriations Committees of the Senate and the House. It confuses the matter further by stating that budget oversight should include a study of CIA's proprietary corporations, a substantive matter. Here the Report switches from an oversight committee to a joint congressional committee responsible for oversight. It should also be noted that there are lawyers who question the constitutionality of a Joint Committee on Intelligence in view of the doctrine of separation of powers and the Supreme Court decision in the case of U.S. v. Curtiss-Wright Corp. (299 U.S. 304).

f. The final sentence in recommendation 6 (p. 35) states that legislation which is recommended here "must not be interpreted as detracting from any presently established substantive rights, whether statutory or constitutional." This raises the serious question of how any such statute as the Report recommends can take away any right guaranteed by the Constitution.

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